

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2006-050143

10/16/2006

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

STATE OF ARIZONA

MIRAL A SIGURANI

v.

OFAM RESIDENTIAL & COMMERCIAL
PAINTING LLC, et al.

DERICK HOPKINS
925 W. BASELINE RD.
SUITE 105
TEMPE AZ 85283

MINUTE ENTRY

The Court has considered Plaintiff Motion for Summary Judgment. No Response has been received. The Court finds and rules as follows.

A limited liability company, like any corporate entity, is itself incapable of performing any task. It cannot “remit” transaction privilege taxes; it cannot “collect, truthfully account for, and pay over” withholding taxes. Only a human actor, designated by the owners of the LLC’s shares, can do so. The Court does not believe it is compelled to follow *In re Inselman*, 334 B.R. 267 (Bankr.D.Ariz. 2005). This Court concludes that the Arizona statutes, A.R.S. § 42-5028 and A.R.S. § 43-435, state with sufficient clarity that the person charged with collecting and remitting the tax on behalf of the corporation is civilly liable for his failure to perform.

Here, OFAM had two members: Defendant Muhammad (now known as Derick Hopkins) and Defendant Odhams. The State has already obtained a default judgment against the LLC and Odhams personally. As the State acknowledges, the identity of the specific individual responsible for payment of taxes in any particular case requires independent determination.

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Here, the State has shown that Defendant Muhammad was co-manager of the LLC and that during the period in question he signed the tax forms. This is sufficient for a *prima facie* showing. Neither in his Answer nor in the accompanying Motion to Dismiss did Defendant allege that some other person was responsible for paying the tax; rather, he objected to his individual liability on the ground that the unpaid taxes were the sole obligation of the LLC protected by the corporate veil. This defense does not prevail against the statutory duty of the person responsible for collecting, accounting for, and paying over the tax. It is not sufficient for Defendant to rest on the pleadings; he must come forward with specific facts showing a genuine issue for trial. *Kelly v. NationsBank Mortgage Corp.*, 199 Ariz. 284, 287 ¶ 15 (App. 2000).

Therefore, IT IS ORDERED granting the Plaintiff's Motion for Summary Judgment.